

MISSOURI COURT OF APPEALS

WESTERN DISTRICT

STATE OF MISSOURI, ex rel., AQUILA, INC., et al., APPELLANTS

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, RESPONDENT

DOCKET NUMBER WD70788

DATE: APRIL 20, 2010

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Two: Lisa White Hardwick, P.J., James M. Smart, Jr. and Alok Ahuja, JJ.

Attorneys:

David Woodsmall, for Appellants

Lewis Mills, for Appellants

Kevin A. Thompson, for Respondent

Karl Zobrist, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI, ex rel., AQUILA, INC., et al., APPELLANTS

v.

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, RESPONDENT

WD70788

Cole County, Missouri

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr., and Alok Ahuja, Judges

Aquila, Inc. filed a rate case with the Missouri Public Service Commission seeking a rate increase for its electric service. In response, the Commission issued a Report and Order, as well as two subsequent Tariff Compliance Orders. The Report and Order and Tariff Compliance Orders were appealed to the circuit court, which affirmed the Commission's actions in all respects.

AG Processing and Sedalia Industrial Energy Users Association ("Industrial Intervenors") appeal from the circuit court's affirmance of the two Tariff Compliance Orders, which were adopted by a Regulatory Law Judge, not the full Commission, and found later-filed, revised tariff sheets submitted by Aquila to be compliant with the Report and Order. The Office of Public Counsel separately appeals the circuit court's affirmance of the Commission's Report and Order, which approved a general rate increase for Aquila. The appeals were consolidated in this Court.

AFFIRMED.

Division Two holds: Section 386.240 expressly authorizes the Commission to delegate the performance of "any act, matter or thing which the commission is authorized by this chapter to do or perform," without limitation, and provides that actions pursuant to such a delegation may bind third parties so long as the action is "expressly authorized or approved by the commission." We reject Industrial Intervenors' claim that the act of issuing such Tariff Compliance Orders is, *per se*, a non-delegable task which must in all instances be performed by the Commission. Moreover, although Industrial Intervenors contend that the issuance of Tariff Compliance Orders often involves the resolution of significant substantive issues which should properly be performed by the Commission, not a delegatee, Industrial Intervenors identify no particular substantive issue which the Regulatory Law Judge decided in the Tariff Compliance Orders at issue here. The Commission effectively ratified, and thus "expressly . . . approved," the Tariff Compliance Orders when it denied the Industrial Intervenors' applications for rehearing of those Orders.

Public Counsel challenges that aspect of the Commission's Report and Order which afforded rate-base treatment to certain unamortized deferred expenses incurred by Aquila in

connection with a capital improvement project at one of its generating facilities. Contrary to Public Counsel's arguments, we conclude that the Commission's Report and Order contained factual findings that were sufficiently definite, certain and specific to enable this court to review the decision intelligently without resorting to the evidence. In deciding to afford rate-base treatment to the deferred expenses at issue here, the Commission was also entitled to rely on the fact that it had previously granted rate-base treatment to these costs.

The Commission understood the nature of the expenses comprising the unamortized balances at issue. The Commission's decision to afford rate-base treatment to unamortized deferred expenses simply recognizes the proposition that when an investor's recoupment on his investment is delayed, compensation for the delayed recovery may be appropriate. Although the Commission was not *required* to permit this rate-base treatment, its decision allowing recovery of a rate of return on expenses which are properly recoverable, during the delay in recovery of those expenses due to a Commission-imposed twenty-year amortization period, is a reasonable exercise of the Commission's ratemaking authority.

The Commission is not bound by *stare decisis* based on prior administrative decisions, so long as its current decision is not otherwise unreasonable or unlawful. The Commission's current decision is consistent with two prior decisions involving the very same costs at issue here. The decision involving a different utility on which Public Counsel relies is distinguishable from this case, since in that case the Commission permitted a shorter-than-customary amortization period, and decided that the utility in that case should forego rate-base treatment of the unamortized expenses as a *quid pro quo* for the shortened amortization schedule. Aquila received no similarly abbreviated amortization schedule here.

Opinion by: Alok Ahuja, Judge

Date: April 20, 2010

This summary is <i>UNOFFICIAL</i> and should not be quoted or cited.
